IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1994 of 2003
with
Civil Application No. 4797 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIKRAMBHAI MAHENDRAKANT MALAVIYA & Ors.
Versus
STATE OF GUJARAT & Ors.

Appearance:
1. Special Civil Application No. 1994 of 2003
MR JT TRIVEDI for Petitioner No. 1-4
MR BJ TRIVEDI for Petitioner No. 1,2,4
MS JIGNASA B TRIVEDI for Petitioner No. 1,2,4
Mr. PD Bhate, AGP for Respondent No. 1-3
NOTICE SERVED BY DS for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.A.PUJ
Date of decision: 01/10/2003

ORAL JUDGEMENT

The present petition is filed under Article 226

of the Constitution of India seeking prayer for quashing and setting aside the communication dated 3.2.2003 issued by the District Registrar directing to hold election for all the members of Board of Directors of The Raj Pipla Nagrik Sahakari Bank Ltd., failing which the issue regarding the Constitution of Custodian Committee would be reconsidered.

2. It is the case of the petitioners that Custodian Committee was formed wherein petitioners were appointed as members on 20.9.2003 in terms of order passed by respondent No.2. On 4.6.2002, Revision Application No. 101 of 2002 was moved before the Addl. Registrar, Co-operative Societies, Gandhinagar and the same was dismissed and thereafter the order of appointment of the Custodian was confirmed. While confirming the said order, directions were given to the Custodian Committee to hold the election within a period of 3 months. Thereafter, on 6.9.2002 the order dated 4.6.2002 passed by the Addl. Registrar (Appeals), Co-operative Societies, was challenged in Revision Application No. 83 of 2002. In the meantime, writ petition, SCA No. 8263 of 2001 was decided by this Court on 4.10.2002 by directing that election be held and the Registrar may follow the procedure for holding the election as directed by Addl. Registrar in Revision Application No. 101/2002. It is further stated that on 22.11.2002 the respondent No.2 appointed the respondent No.4 to be In-Charge Manager of The Rajpipla Nagarik Sahakari Bank Ltd., as the Returning Officer for holding the election for the vacant posts of directors, vide communication dated 22.11.2002. Pursuant to the said appointment, a notification was issued on 17.1.2003 for the election to the 7 vacant posts of directors including one belonging to Scheduled Tribe and one for marginal farmer (agriculturist). Thereafter, on 3rd February 2003, the respondent No.2 has issued the impugned communication and that has been challenged by the petitioners in the present petition.

3. Initially, this Court has issued notice and interim relief was granted in terms of Para 6(b) of the petition. During the pendency of the petition, amendment was moved by the petitioners stating that an order has been passed in the Lavad Suit No. 103 of 2003 by the Jt. Registrar & Member, Board of Nominees, Vadodara on 8.7.2003 to the effect that the voters' list be prepared afresh within one month after due publicity and invite objections etc., and the election be held thereafter. The Custodian Committee is examining the legality and propriety of the said order so as to decide as to whether the same be challenged by appropriate proceedings. It is further stated in the amendment that the Custodian

Committee be continued in management of the bank until the election process would be complete and newly elected body takes over.

4. An affidavit-in-reply is filed on behalf of the District Registrar wherein it is stated that in the order dt. 20.9.2002 condition No.4 was imposed that the appointment of custodian committee is for a period of either the election of new committee is completed or six months from the date of order whichever is earlier. As per the said condition the validity period of the appointed committee in which petitioner is also one of them, expired on 20.3.2003 and thereafter it was the liability of the appointed committee to hold the election of the whole committee before that validate date. It is further stated that when the custodian committee is appointed under Sec. 74-D of the Gujarat Cooperative Societies Act, 1961 the whole committee earlier elected is discharged and therefore the election of the whole committee is required to be held. It is further stated that the election committee of the Rajpipla Nagrik Bank consists of a committee of members and every year three committee members retire by rotation. It is therefore submitted that three committee members' election was due in February 2002 and election of other three committee members was due in February 2003 and the remaining three committee members' election is due in February 2004. However, two committee members have resigned on 21.10.2002 and hence only one elected person, i.e. the petitioner remains as claimant. He has therefore submitted that under the order dt. 4.6.2002 the Additional Registrar has ordered to hold the election of the committee within 3 months from the date of order in Revision Application No. 101/2001 and the same is also upheld by respondent No.1 revisional authority in Revision Application No. 83/2002. It is therefore submitted that despite this instruction given to the petitioner, the procedure of holding the election was delayed and pursuant to letter dated 22.11.2002 the election programme was published on 17.1.2003. In view of the matter, the impugned communication dated 6.2.2003 was issued by the respondent authorities which is under challenge in the present petition.

5. During the pendency of this petition, a Civil Application was moved by one Dr. Nikhilbhai Natwarlal Mehta for joining party in the present petition. It is stated in the said application that the applicant was Chairman of the Rajpiplaa Nagrik Sahakari Bank Ltd., and the opponent No.2 utilised the political powers and without any authority and without issuance of show cause

notice the Custodian has been appointed which has been challenged before this Court by filing the SCA No. 8263 of 2001 before this Court. The said SCA came to be disposed of by this Court on 4.10.2002 (Coram: P.B. Majmudar, J.) by issuing direction that election be held as per the direction issued by the Additional Registrar as well as Deputy Secretary. It is further stated in the said application that opponents No. 1 to 4 have been appointed in the custodian committee and with a view to stick to the chair they have not held the election so far despite there being specific direction from this Court. It is further stated that with a view to bring correct facts to this Court the application was moved for joining party in the present petition.

6. In support of the applicant's application to be joined as Respondents in the main petition and the petitioners in the main petition do not deserve any relief, Mr. B.S. Patel, the learned Advocate appearing for the applicant relies on the decision in the case of Amreli District Co-operative Sale & Purchase Union Ltd. & Ors. vs. State of Gujarat - 1984 25 (2) GLR Page 1244, wherein this Court has taken the view that :

> "As a matter of fact, the provision is an enabling provision that when a new committee of management is not elected or having been elected not functioning after the expiry of six months of the term of the office of members of the old Committee of management of such society, the Registrar is empowered to appoint a sole Custodian, or a committee of persons as custodian of such society. The Registrar cannot exercise the power where the election of the new managing committee or functioning thereof after election is restrained under the orders of the Court. It is only when, on account of the voluntary default of the society in electing a new Committee or on account of a default of newly elected Committee to function that the Registrar is entitled to exercise the power. We must, therefore, treat this provision as a provision in public interest and we do not think that it can be said to be unreasonable since the custodian is to exercise his powers subject to the control of the Registrar and such instructions as may be given from time to time. This is a stop-gap arrangement until a new management committee is elected or a newly elected committee starts functioning. The challenge to this section is,

therefore, rejected and the provision must be upheld as a valid and intra vires the Constitution.

An apprehension was expressed that this power of the Registrar to appoint a sole Custodian or a committee of persons as Custodian on such society is unrestricted since such an appointment can be made without any restriction on the tenure thereof. We are of the opinion that the apprehension is not well founded since sec. 80-A which is complimentary to sec. 74-D provides the tenure of Custodian or the management committee. By necessary implication, therefore, the tenure of the custodian or the management committee. By necessary implication, therefore, the tenure of the custodian or the management committee appointed by the Registrar under sec. 74-D also should not exceed the tenure of two years, as prescribed under sec. 80-A."

7. After having heard Mr. JT Trivedi, the learned Advocate appearing for the petitioners, Mr. PD Bhate, the learned Asstt. Govt. Pleader appearing for the Respondents Nos. 1 to 3 and Mr. B.S. Patel, the learned Advocate appearing for the applicant in C.A. No. 4797 of 2003, this Court is of the view that the custodian has taken over the charge of the Bank on 5.10.2001 and as per the decision of this Court in Amreli District Co-op. Sale and Purchase Union Ltd. & Ors. (Supra), the tenure of custodian or the management Committee appointed by the Registrar u/s. 74-D of the Act, should not exceed the tenure of two years, as prescribed u/s. 80-A of the Act. This Court has also made it clear that the custodian is to exercise his powers subject to the control of the Registrar and such instructions as may be given from time to time. While constituting the Custodian Committee on 20.9.2002, the District Registrar has made it clear that the tenure of the committee would be either till the completion of election process or upto six months, whichever was earlier. The six months period was over on 20.3.2003 and yet the election was not over. The District Registrar was, therefore, fully justified in giving further direction to the In-charge Manager and the Election Officer to hold the election for all the members of the Board of Directors, and also giving an intimation to the Custodian Committee to act as per the said direction or, he would have to reconsider for constitution of the Custodian Committee. There is, therefore, valid reason

to challenge the communication dated 3.2.2003. Even otherwise, either on the ground of expiry of the period of two years from the date of appointment of the Custodian on 5.10.2001 or on the ground of expiry of the period of six months from the date of constitution of the present Custodian Committee on 20.9.2002, the present Custodian Committee has no right or authority to hold the charge or manage the affairs of the Bank. This Court is, therefore, of the view that there is no merit or substance in the petition and it is liable to be dismissed. The petition is, accordingly, dismissed. Notice discharged. Interim relief granted earlier is vacated. The District Registrar is directed to start the process of holding election forthwith.

8. Mr. Trivedi, ld. advocate appearing for the petitioners prays for stay against the execution of the order upto 8th October 2003 so as to enable him to challenge the present order before the appropriate forum. Mr. Bhate, ld. AGP submits that no extension can be granted as the term of the Custodian Committee has already expired on 20th March 2003. Since the petition is dismissed on the very ground that the term of the Custodian Committee expired, no stay be granted and hence the request made by Mr. Trivedi is rejected. However, the effect of this order shall not be given till 8th October 2003.

9. Since the main petition is dismissed, no order on the Civil Application No. 4797 of 2003 and the same shall stand disposed of accordingly.

rmr. [K.A. Puj, J.]